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SUTHERLAND et al. v. GENT.

Sept. 7, 1914.

[82 S. E. 713.]

1. Ejectment (§ 86*)—Burden of Proof—Reservations from Deed.

—The facts held not to make the case one within Code 1904, § 2734a, placing, under certain circumstances, the burden on defendant in ejectment of showing that the land in controversy, within the exterior boundaries of a deed under which plaintiff claims, is within a reservation therefrom.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. §§ 238-245; Dec. Dig. § 86.* 4 Va.-W. Va. Enc. Dig. 904.]

2. Evidence (§ 274*)—Declarations of Deceased—Boundaries.—

Declaration of deceased that a certain spot, on which was no monument, was a certain corner of a certain survey, is inadmissible, though he was a surveyor; it not being shown he had, by actual survey, identified the corner, or on what knowledge or information his declaration was founded.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1121-1134; Dec. Dig. § 274.* 13 Va.-W. Va. Enc. Dig. 932, 933.]

3. Evidence (§ 506*)—Opinions of Experts—Fact in Controversy.

—Experts may not express opinions on whether the land in controversy is within the boundaries claimed by the declaration in ejectment.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2309; Dec. Dig. § 506.* 5 Va.-W. Va. Enc. Dig. 778.]

4. Evidence (§ 459*)—Parol Evidence—Christian Name of Grantee.

—A deed to two persons, giving the Christian name and surname of one, but the surname only of the other, leaving a blank for his Christian name, does not vest the title in the first alone, but the Christian name of the other may be shown by evidence aliunde.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1722, 1906-1910, 2109-2114; Dec. Dig. § 459.* 10 Va.-W. Va. Enc. Dig. 755.]

5. Evidence (§ 366*)—Record in Former Suit.—Of the record in another suit, it is enough to introduce the pleadings, showing the issues, the decrees, showing the decision on the issues, and a deed made in pursuance thereof, showing the decrees had been carried into effect; and the evidence therein, the only effect of which would be to confuse and mislead the jury, which has no power to review the decision, is properly excluded.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1521-1539; Dec. Dig. § 366.* 4 Va.-W. Va. Enc. Dig. 757.]

6. Appeal and Error (§ 970*)—Trial (§ 59*)—Order of Admission

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

of Evidence—Discretion.—The order of admission of evidence is, in the discretion of the trial court, reviewable only for abuse of such discretion to the prejudice of the other party.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3849-3851; Dec. Dig. § 970;* Trial, Cent. Dig. §§ 138-140, 142, 143, 145; Dec. Dig. § 59.* 1 Va.-W. Va. Enc. Dig. 592]

7. Ejectment (§ 90*)—Evidence—Record of Othe. Suit.—The record in an action of ejectment by B. against S., in which B. had judgment, is, in ejectment by G. against S. and others, for land including that involved in B.'s action, admissible against S., at least to prove a breach in the continuity of his possession, provided it be shown possession of the land was taken by B. under his judgment.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. §§ 254-277; Dec. Dig. § 90.* 4 Va.-W. Va. Enc. Dig. 909.]

Error to Circuit Court, Russell County.

Action by J. W. Gent against W. H. Sutherland and others. Judgment for plaintiff, and defendants bring error. Reversed and remanded for new trial.

W. W. Bird, of Lebanon, and *Sutherland & Sutherland*, of Clintwood, for plaintiffs in error.

Finney & Wilson, of Lebanon, for defendant in error.

EDGEWOOD DISTILLING CO. Inc., v. ROSSER'S ADM'R et al.

Sept. 7, 1914.

[82 S. E. 716.]

1. Exemptions (§ 46*)—Homestead—"Shifting" Stock of Merchandise.—A homestead exemption out of the proceed of the sale in bulk by his administrator, of intestate's stock of goods, is not within the inhibition of Const. 1902, § 191, and Code 1904, § 3630, that such exemption shall not be claimed or held "in a shifting stock of merchandise"; the business terminating and the stock ceasing to be shifting on intestate's death.

[Ed. Note.—For other cases, see Exemptions, Cent. Dig. § 62; Dec. Dig. § 46.* 7 Va.-W. Va. Enc. Dig. 90.]

2. Exemptions (§ 30*)—Homestead—Stock of Goods—Rights of Infants—Removal from State.—The right of infants residing in the state with their father to a homestead exemption, attaching immediately on his death, is not lost by their mother and guardian taking them from the state.

[Ed. Note.—For other cases, see Exemptions, Cent. Dig. § 34; Dec. Dig. § 30.* 7 Va.-W. Va. Enc. Dig. 89.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.